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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 CITY OF SAN DIEGO,

12 Plaintiff,

13 v.

14 INDIAN HARBOR INSURANCE
15 COMPANY,

16 Defendant.

CASE NO: 12-CV-2604 W (WVG)

**ORDER GRANTING IN PART
DEFENDANT'S MOTION TO
DISMISS OR STAY [DOC. 10]**

17 Pending before the Court is Defendant's motion to dismiss or stay. [Doc. 10.]
18 The Court decides the matters on the papers and without oral argument. See Civ. L.
19 R. 7.1(d.1). For the reasons discussed below, the Court **GRANTS IN PART**
20 Defendant's motion.
21

22 **I. BACKGROUND**

23 Plaintiff City of San Diego ("City") and Defendant Indian Harbor Insurance
24 Company ("Indian Harbor") are currently embroiled in a bicoastal dispute regarding a
25 pollution and remediation legal liability insurance policy sold by Indian Harbor. This
26 dispute has lead to the filing of three separate lawsuits.
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1 On July 27, 2012, Indian Harbor filed a lawsuit in the Southern District of New
2 York (“New York Federal Action”) styled Indian Harbor Insurance Company v. City
3 of San Diego, Case No. 12 CIV 5787 (JGK). (*Hurtado Decl.* [Doc. 12] ¶ 2.)

4 On September 21, 2012, the City filed a lawsuit in the Superior Court for the
5 County of San Diego styled City of San Diego v. Indian Harbor Insurance Company.
6 (*Hurtado Decl.* ¶ 3.) That case was subsequently removed to this Court on October 25,
7 2012 (“California Action”). (*Id.*)

8 On October 5, 2012, Indian Harbor filed a lawsuit in the Supreme Court of the
9 State of New York, County of New York styled Indian Harbor Insurance Company v.
10 City of San Diego, Index No. 157014/2012 (“New York State Action”). (*Hurtado Decl.*
11 ¶ 4.)

12 On October 26, 2012, Indian Harbor filed a motion to enjoin the City’s
13 prosecution of the California Action. (*Hurtado Decl.* ¶ 5.) On November 28, 2012, the
14 Southern District Court of New York granted the motion and enjoined the City’s
15 prosecution of the California Action (“order to enjoin”). (*Id.*) In that same order, the
16 Southern District of New York denied the City’s motion to dismiss that case for lack of
17 personal jurisdiction and venue. (*La Londe Decl.* [Doc. 10-2] ¶ 2, Ex. 1.)

18 After issuance of the order to enjoin, the parties agreed to stay the third-filed
19 New York State Action. On December 19, 2012, the parties signed a stipulation to that
20 effect. (*Hurtado Decl.* ¶ 6.) However, the parties could not come to an agreement
21 regarding the California action. On January 14, 2013, Indian Harbor suggested that the
22 City dismiss the California Action without prejudice. (*La Londe Decl.* ¶ 5.) The City
23 declined to voluntarily dismiss the case and suggested that the action be stayed in a
24 similar fashion to the New York State Action. (*Hurtado Decl.* ¶ 10.)

1 Because the parties could not agree on whether to stay or dismiss the California
2 action, Indian Harbor filed the instant motion to dismiss, or in the alternative, stay the
3 action. (MTD [Doc. 10], Reply [Doc. 13].) The City opposes¹. (Opp'n [Doc. 11].)
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5 **II. DISCUSSION**

6 After weighing the equities of the case, the district court may exercise its
7 discretion to dismiss a duplicative later-filed action, to stay that action pending
8 resolution of the previously filed action, to enjoin the parties from proceeding with it,
9 or to consolidate both actions. Adams v. California Dept. of Health Services, 487 F.3d
10 684, 688 (9th Cir. 2007).

11 A district court has discretionary power to stay proceedings in its own court
12 under Landis v. North American Co., 299 U.S. 248, 254 (1936). In determining
13 whether to grant a stay, a court should consider the possible damage that may result,
14 the hardship or inequity that a party may suffer, and the orderly course of justice, in
15 terms of simplifying or complicating the issues, proof, and questions of law that could
16 result from issuing the stay. Lockyer v. Mirant Corp., 398 F.3d 1098, 1109, 1111 (9th
17 Cir. 2005). A court can take into account the existence of similar cases pending in the
18 same district, and the probability that more are likely to be filed. Id.

19 The only issue before the Court is whether the California Action should be
20 dismissed without prejudice or stayed, in light of the Southern District of New York's
21 order to enjoin the prosecution of the California Action. Indian Harbor insists dismissal
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23 ¹ Indian Harbor suggests that its motion to dismiss should be granted because the City's
24 opposition was filed late. (Reply 1.) Although it is true that Civil Local Rule 7.1.f.3.c allows
25 the Court to grant a motion that is not timely opposed, the Court is not required to do so.
26 Here, Indian Harbor has presented no evidence that the late filing of the City's opposition has
27 prejudiced Indian Harbor in any way. Therefore, the Court, in its discretion, will consider the
28 opposition timely filed. See Thompson v. Housing Auth. of City of Los Angeles, 782 F.2d 829
(9th Cir. 1986) ("District courts have inherent power to control their dockets."); see also
Hamilton Copper & Steel Corp. v. Primary Steel, 898 F.2d 1428, 1429; Fed. R. Civ. P. 1
("[The Federal Rules of Civil Procedure] should be construed and administered to secure the
just, speedy, and inexpensive determination of every action and proceeding.").

1 is appropriate, while the City urges the Court to stay the action. For the following
2 reasons, the Court finds that a stay is the appropriate course of action here.

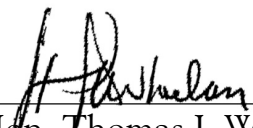
3 First, dismissal will introduce the possibility of prejudice to the parties, such as
4 statute of limitations issues. Second, the Southern District of New York has explicitly
5 reserved the right to lift the injunction and have the case heard in the Southern District
6 of California. (*Hurtado Decl.* ¶ 11, Ex. 3 p. 10.). Third, the parties both agree that a
7 stay is appropriate, even though Indian Harbor prefers that the matter be dismissed.
8 (*MTD* 3:6-8; *Opp'n* 1:5-6.) A stay, under these circumstances, is the simplest way to
9 effectuate the Southern District of New York's injunction while avoiding any prejudice
10 to the parties. After all, although it may not be likely that this Court will ultimately
11 host the substantive litigation of this dispute, and prejudice may not result from
12 dismissal, "why take chances?" See Asset Allocation & Mgt. v. Western Employers
13 Ins., 892 F.2d 566, 571 (7th Cir. 1989).

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15 **III. CONCLUSION**

16 In light of the foregoing, the Court **GRANTS IN PART** the motion and orders
17 this civil action **STAYED** in light of the Southern District of New York's order to
18 enjoin the prosecution of this matter. The Court **FURTHER ORDERS** the parties to
19 jointly report to the Court on the status of the New York Federal Action by October
20 1, 2013.

21 **IT IS SO ORDERED.**

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23 DATED: July 25, 2013

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25 
26 Hon. Thomas J. Whelan
27 United States District Judge
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